IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 803 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and

Hon'ble MR.JUSTICE D.G.KARIA

STATE OF GUJARAT
Versus
MANSURBHAI MOTIBHAI DAMOR

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement ? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judges ? YES TO ALL CRIMINAL COURTS

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Appearance:

MR. M.A. BUKHARI, ADDL. PUBLIC PROSECUTOR for Appellant-State.
MR MJ BUDDHBHATTI for the Respondent-accused

CORAM : MR.JUSTICE K.J.VAIDYA and

MR JUSTICE D.G.KARIA JJ.

05-07-1996

ORAL JUDGEMENT {Per : Vaidya, J.}

The three most important questions in focus arising for our consideration in this Acquittal Appeal are : (i) Whether in a Corruption Case, warranting proof of three principal ingredients of offence of bribe viz., Demand, Offer and Acceptance, and in that case even if the direct evidence consisting of the complainant and first panch witness (directed to hear and see the bribe transaction) turn hostile to the prosecution then even merely relying upon the circumstantial evidence on the point comprizing of the second panch and the Investigating Officer, Court can still record order of conviction and sentence ? (ii) Whether by merely mechanically affixing the label of the 'Selected panch' to panch witnesses when in fact there is indeed no material brought on the record to indicate that they were so selected by the Investigating Officer in conspiracy with the complainant or for some oblique motive by himself alone with a view to falsely implicate and secure conviction of the accused at any cost, his evidence can be discarded as malacious and interested witness ? and further ? (iii) Whether the Investigating Officer in a trap case also merely because he is police officer can he be straighway mechnically branded as a witness ultimately interested in success of the investigation and therefore on that ground alone without there being anything brought on the record to show that his evidence was otherwise tainted, personally maliciously interested in falsely implicating the accused, his evidence must be discarded and that no order of conviction and sentence can ever be passed on the basis of the sole testimony of such Investigating Officer ?

1.1 The above three questions, and for that purpose, how indeed the evidence in the Corruption cases under the prevention of Corruption Act, 1988, an Act specially enacted to meet with the challenging evil of corruption, is required to be tested, appreciated and decided, is the main core of discussion in this judgment before us. The reason is that these days in some of the cases, on some trivial grounds or excuses, accused are acquitted without any serious, sincere efforts made firstly by the learned PP in charge of the case and thereafter by the trial Courts.

2. Before the Parliament specially enacted the

prevention of corruption Act, 1955 and thereafter the later Prevention of Corruption Act, 1988, Section 161 was already there in IP Code dealing with the bribery cases. But then taking into consideration the rampant rising and unabated tide of corruption, Parliament in its anxiety realizing that Section 161 of IP Code was little too inadequte to meet with the problem, enacted special Corruption Act - incorporating a special deeming fiction by virtue of which the statutory presumption was raised against the accused which of course was made rebuttable on preponderance of probability shown by the accused. Now despite this special deeming fiction virtually new Corruption Act appears to have failed to bring about the desired result rather the deterrent effect because of little, liberal and some times even quite unjust, indiscreet appreciation of evidence. We not for a moment suggest and even entitled to take away judicial discretion in matter of appreciation of eidence directing the trial Courts to convict accused in all Corruption cases irrespective of its judicial satisfaction to record conviction. No. To such arbitrariness and arrogance we cannot dream even to be a party to impose the same on trial Courts. But at the same time, we would be just failing in our duty if we do not guide the concerned courts how to mind their ways of appreciating evidence in corruption cases, more particularly in the light of the observations made on the pages of this judgment. In substance, what we say, we intend to say is that we are quite opposed to casual, slip-shod, scratching the surface way of the appreciation of evidence and record rough and ready cheap acquittal. This is improper, illegal and quite unjust. In our opinion, the matter of fact and real appreciation of evidence is the test of judicial wisdom and sound common sense of the trial Court ! This indeed requires basic judicial awareness, vision and wisdom which comes from the experience only, that great teacher of life and or by learning from such experienced persons when the one is just on way gathering the same ! For this, one has to grow in experience and till the time that experience does not grow and/or blossom into its fullness one has to draw and share light of the experience from such experienced one ! But while drawing and sharing experience from the reported judgments, the basic requirement is to closely marshal and scrutinize the facts and circumstances of the each case at hand and one in the reported judgments and then to find out whether the decision of High Court and/or for that purpose of Supreme Court fits in or not to be applied. This requires total application of mind which comes out only from the composed intelligence and total awareness of the concerned judicial officers. In

substance, the appreciation of evidence is always a matter of honest and sincere toil and sweating as a result thereof and not an easy arm-chair exercise to reach just first hand handy conclusion and stop there and then only scratching merely a surface of the prosecution evidence and deliver the judgement acquitting accused !! We do believe that as far as possible the appellate judgment should be commendably precise and not unduly prolix, however, at the sametime the observations made herein and such other type of observations once a while made, which are emminently and inevitably necessary to make as we are of the view that the objective of giving a judgment is not merely to appreciate the evidence and thereby to settle the rival contentions and give fair and substantive justice to the parties before it, but it is also equally imperative to enlighten, educate and tone-up the subordinate courts and statutory functionaries to live-up to their expectations and to give the better account of their efficiency and accountability to the people the real customers of justice. The High Court judgment thus has many fold purposes. The paramount one of them being the transparent, efficient, accountable and substantive justice oriented Administration of Justice. For this purpose, the length of judgment when occasion so warrants should never worry the duty conscious Court for that purpose.

3. To briefly narrate the prosecution case, according to PW-5, Kalsinh Vijabhai Baria,on 17-9-1990 when he was on duty as PI ACB, Godhra, PW-1 Nathabhai Lembabhai came to him and gave a complaint (EX-11) alleging therein that Mansurbhai Motibhai Damor, Head Constable at Ranakpur Outpost had demanded Rs.1000/- to settle the complaint filed against him regarding offences registered against him under the Forest Act and for that purpose, he had already paid Rs.200/- to him and the balance amount of Rs. 800/- was to be paid to him, next day ie., to say on 18th September, 1990. On the basis of this complaint, PW-5 PI ACB requisitioned the services of two panch witnesses viz. PW-2 Kamlesh Mohanlal Shah and PW-3 Revsinh Ramsing Talar who were later on introduced to the PW-1 complainant and were posted with the facts regarding the bribe demanded by the accused from him. Thereafter PW-1 produced currency notes of Rs.800/= regarding which the usual pre-raid anthracene powder test was carried out in presence of the PW-1, PW-2 and PW-3 i.e., complainant and two panchas respectively. The number of muddamal currency notes were noted down in the Panchnama Exh. 13. Thereafter, the PW-2 (First Panch) was instructed to accompany PW-1 and witness whatever transpired in between PW-1 and the accused. PW-1 was

further instructed to give the bribe amount only as and when so demanded by the accused. After this preliminary part of the Panchnama Exh. 13 was over, PW-5 PI ACB alongwith PW-1, PW-2 and PW-3 proceeded towards Ranakpur Outpost in a jeep which was stopped at some distance near Chokdi of village Amthani from where PW-1 and PW-2 (first panch) went walking to Ranakpur Outpost, and rest of the members of the raiding party lied around secretly in wait. At 8-45 AM, on PW-1 giving the pre-arranged signal, PW-5 PI ACB with PW-2 (second-Panch) entered the outpost where accused was found sitting in the chair. He was asked not to move. Thereafter, PW-5 introduced himself as PI ACB and on making inquiry, PW-1 (first panch) in presence of PW-2 (second Panch) and others narrated the whole incident which was transcribed in the Panchnama Exh. 13. Thereafter, usual post anthracene powder test was carried out and in turn when the hands of the accused were examined in the light of the ultra-violate lamp, the fingers, thumbs and some portion of the palm of both the hands were found smeared with the anthracene powder. Thereafter, when the accused who had put on lungi and banyan having no pockets was searched, nothing incriminating was found. Thereafter, however, just on the right side near his chair on which accused was sitting, a leather vallate was found and on opening of the same, a bunch of currency notes was recovered by the PW-2 (first panch). The numbers of these notes when compared, tallied with numbers noted down in earlier part of the Panchnama Exh. 13. Not only that but the said notes were also found bearing the anthracene powder marks. This was seized, in presence of PW-1, 2, 3 & 5 present at the scene of the incident regarding which the second part of Panchnama (EX-13) was made, which was over at about 12-15 hours, and ultimately came to be duly signed by both the Panchas and PW-5 PI ABC. On the basis of this trap-proceedings, after the investigation was over, obtaining sanction, the respondent-accused came to be chargesheeted to stand trial for the alleged offences punishable under sections 7, 13 (1) (d) and Section 13 (2) of the Prevention of Corruption Act, 1988, which came to be registered as a Special Case No. 8 of 1991, before the Special Court, Panchmahals at Godhra.

4. At trial, the respondent pleaded not guilty and claimed to be tried. His case was that of total denial.

6. The trial court ultimately by its judgment and order dated 26-4-1995, acquitted the accused mainly on the ground that the PW-1 complainant and PW-2 (first Panch) did not support the prosecution on the point of demanding and accepting the amount of Rs.800/= and

thereby giving rise to the present appeal.

5. Now having heard Mr. M.A.Bukhari, the learned APP appearing for the appellant-State and Mr. M.J. Budhbhatti, learned advocate for the respondent-accused, it must be stated at the very outset that the impugned judgment and order of acquittal is ex-facie perverse as the trial Court has failed to give due weightage and take into consideration unimpeachable evidence of PW-5 PI-ACB as duly corroborated by PW-3 (second panch) supporting the prosecution and to some extent even the evidence of hostile witness PW-2 (First Panch) !! This is not a case wherein remotely even two views are possible. From the evidence of these prosecution witnesses quite clear and clinching circumstance has been brought home proving beyond any manner of doubt three principal ingredients of offence of bribe under section 13(1)(d) of the Corruption Act, viz., the demand, offer and acceptance of the bribe amount. We want to make it clear that merely because PW-1 complainant and PW-2 (first panch) did not support the prosecution (unless of course the complainant is the type of the person as we found in case of Ajit kumar Somnath Pandya versus State of Gujarat, reported in XXXIV (1993) 1 GLR 753) that fact standing by itself is indeed not sufficient to discard the entire prosecution case, if indeed there is another, quite dependable circumstantial evidence regarding demand, offer and acceptance of the bribe amount. This we say so because these days to defeat the prosecution case witnesses are won-over by devices of threats, promises and inducements. Further, after the date of offence, by the time the evidence is recorded before the trial Court, three to five years easily and unfortunately pass by, making the witnesses committing some honest mistakes because of memory lapse. Under such circumstances, if cases are casually disposed off, real justice can never be brought home !! What we say, in the facts and circumstances of this case, stands duly supported by three decisions relied upon by the learned APP, out of which three are of the Supreme Court and one of this court. They are - (1) AIR 1980, SC, 873 Hazarilal Vs. Delhi Administration; (2) AIR 1984, SC 1453 - State of UP Vs. G.K.Ghosh; and (3) (4) XXXIV (1993) 1, GLR, 853 Nasirmiya H. Malik Vs. State of Gujarat.

7. It appears that the trial court while appreciating the evidence has totally misconceived the settled legal position to the effect viz., firstly that when the complainant and the panch witness give go-bye to the prosecution case, the prosecution case comes to a dead-end and is required to be buried and nothing further

is required to be considered or done, secondly, to prove the principal ingredients of offence of bribe, viz., demand, offer and acceptance, there should be only and only direct evidence and that the same could not be held to be proved by the circumstantial evidence, thirdly, if panchas are taken from the Government office, they being 'selected panch' loses all credibility as an independent witness, and fourthly, the investigating officer being interested in success of the Investigation, his evidence can never be straighway accepted and relied upon for basing the order of conviction and sentence. It is this patent, factually and legally perverse approach, which has constrained us to reverse the order of acquittal on the grounds exhaustively set out hereafter at appropriate place.

8. Having heard the learned advocates appearing for the respective sides, further bearing in mind that this is an acquittal appeal, we have been called upon to determine as to whether the demand, offer and acceptance of the bribe money have been brought home !! Now in order to bring home this specific charge and succeed, like any other criminal cases, the prosecution can lead and depend upon either the direct and/or the circumstantial evidence, as the case may be. In this case also the prosecution in all has examined four witnesses, out of which PW-1 complainant and PW-2 (first panch) are the witnesses examined for the purpose of establishing the case of demand, offer and acceptance by leading the direct evidence and PW-3 (second panch) and PW-5 PI ACB who have been examined partly as a direct and partly as evidence supporting the circumstantial evidence. Now the crucial question that arises for our consideration is 'whether in a given case, like the present one, where the direct evidence for whatever reason turned vault face and did not support the prosecution and thereby ultimately the entire burden shifted partly on the direct and circumstantial evidence viz. that of PW-3 and PW-5 PI ACB, and further when if on the basis of proved facts, the trial court is able to draw just and reasonable inference that PW-1 and PW-2 were liars having no regard for the truth and further as having been won-over to help favour accused and further still, if the quality of the circumstantial evidence brought on the record by PW-3 (second panch) and PW-5 PI ACB is of sterling quality and dependable and accordingly sufficient to record thereupon the order of conviction and sentence or not ? On going through the impugned judgment, which with respect to the learned trial Judge undoubtedly appears to be a lopsided having appreciated the prosecution evidence only with one and wandering eye

ignoring altogether the impact of otherwise quite dependable evidence of PW-3 and PW-5 viz., that is to say whether the same was cogent and convincing enough to act upon and record the order of conviction and sentence or not it must be stated without any hesitation that the same is required to be reversed. In otherwords, the question before us is that so far as the overall credibility of the prosecution case is concerned, does this credibility is to be thrown to the winds and negatived merely because the direct evidence on that point does not support the prosecution more particularly when there is ample, clinching circumstantial evidence of PW-3 (second panch) and PW-5 PI ACB fully satisfying the conscience of the court to the hilt warranting order of conviction of the accused ? The answer is such circumstantial evidence can certainly still be utilized and relied upon to sustain the overall credibility of the prosecution case as it is. For the reasons we will be stating hereafter, it appears to us that it will not be a judicial approach if the prosecution case is examined in separate compartments namely that of the direct evidence and circumstantial evidence and because one compartment, viz., that of the direct evidence does not support the prosecution and therefore the second compartment that of the circumstantial evidence should also be disconnected and ignored !! The reason is that out of four prosecution witnesses, if two witnesses for whatever reason have no regard for the truth and do not support the prosecution, how indeed the court because of the hostility of the said two witnesses become hostile to the prosecution in fairly appreciating otherwise sterling dependable quality of the other two truthful witnesses !! In our opinion, when a Judge is called upon to decide a case, he has to first of all steer clear of the prejudices as well as fixed mind approach. He has to further steer clear of the straight-jacket formulas. He has also to steer clear of being unnecessarily mechanically obsessed and influenced by judgments of some High Courts or for that purpose even the Supreme Court which are indeed good in their respective ways in the facts and circumstances of that particular case, unless the points at issue are directly covered by the facts. In substance, when a Judge is called upon to decide case, he has to decide the same without being in any way swayed by the rhetoric arguments of the learned advocates or some mechancial reference to judgments, rather the court has to apply its mind afresh to the facts situation emerging from the record before it ! It has to first of all ask its conscience whether the evidence of the particular witness is dependable ? It has to further vouch-safe its conclusion by asking yet another important

question whether the overall prosecution case is probable ? And further still, whether it would be risky and hazardous to rely upon the evidence of particular witness to base the order of conviction and sentence !! If after satisfying the conscience on these three counts, if the court feels that the case on hand is one that of acquittal, the accused must be declared acquitted forthwith and as against this, if the case was found to be one that of the conviction, the accused must be convicted. A Judge would be giving reasons for whatever conclusion he is reaching thereby the transparency of the Judge and the judgment would be ex-facie clear on the record. A Judge has an accountability to his own conscience and also to society for the social justice. Accordingly, at the cost of repetition it may be once again stated that whenever any matter comes up before it, the court should not lose its objectivity and dispassionate approach and must address itself directly to the evidence on the record whether it satisfies its conscience or not !! Once this test of accountability and self-satisfaction is satisfied, then giving the reasons without resorting to any straight-jacket formulae, the pure and simple justice can be delivered. This we are high-lighting because many a times in some cases judgments on both sides are available and accordingly the trial Judge feels himself on cross-roads rather embarassed and on the horns of dilemma, as to which judgment should be followed and which one not, what is to be done and what is not to be done ! Infact, this is not to say that the judgment of the High Courts and /or for that purpose of the Apex Court are of no help to any court. They do render valuable assistance. They are the light-houses which guide us like the polestar to go in the right direction. Polstar only points out that a particular direction from where it is shining is North and on the basis of that, navigator ultimately adjusts his sailing direction to reach his destination. To this extent, on facts the judgments are useful, must be made use of, but it is thus far and no further. What has been prefaced here is prefaced only with a view to see that while appreciating the evidence in the light of the various decisions, we also do not wander away on the cross-roads, cross-authorities available on both the sides. Having made this preliminary discussion as to how the facts-situation and law is required to be appreciated in criminal trial, we now proceed to examine various submissions made by the learned advocates appearing for the respective parties. Since at the very outset we have already expressed that though PW-1 and PW-2 (first panch) did not support the prosecution, still however since the evidence of PW-3 and PW-5 PI ACB are found to be beyond

doubt and of dependable quality , that is to say since we are accepting the submissions made by the learned APP, we straightway proceed to deal with the submissions made by Mr. Budhbhatti, the learned advocate for the respondent-accused.

9. While making some valiant efforts to support and sustain the impugned order of acquittal, Mr. M.J. Budhbhatti, raising the preliminary objection, submitted that PW-5, PI ACB, Godhra who investigated the offence was only PI, he accordingly, in view of the specific provision in section 17 (c) of the Corruption Act, since it is mandatory that investigation should be carried out only by the officer of the rank of Dy. SP or a police officer of equivalent rank, and he was not so authorized by the Government by general or special powers and further since that in the instant case, the prosecution has led no evidence to show that PW-5 PI ACB was so authorized to investigate, the investigation being ex-facie illegal, the trial was ab-initio-void. Now ordinarily, it is quite true that if PI was to investigate the case under the Corruption Act, then as required under the provisio to Section 17(c) of the Corruption Act, he must have been so authorised by the State Government in this behalf by general or special order. It is also true that in the instant case the prosecution has not brought on record the said authorization by the State Government by Special or General Order. However, it appears to us that but for such an authorisation, PW-5 PI, ACB ordinarily would not have arranged trap and investigated the case, and accordingly, he must hae been so authorized as warranted under Section 17 (c). Still however, by way of abundant caution, to set at rest the controversy that is raised, we immediately asked the learned APP to meet with the point raised on behalf of the accused. To this, the learned APP was frank enough to admit that there was nothing in the evidence of PW-5 PI-ACB to indicate that he was so authorized as PI to investigate the case. However, on oral request made by the learned APP we in overall interest of justice permitted him to lead additional evidence. This was seriously objected to on the ground that the prosecution cannot be permitted to fill-up lacuna. Now whether there was any official Notification authorizing PI, ACB to investigate the corruption cases or not and produce the same on record cannot be said to permit prosecution to fill up the lacuna. The reason is this Notification was already in existence and Court was not permitting the prosecution to have some fresh notification to be issued to fill-up the gap. In this view of the matter, rejecting this

contention of Mr. Budhbhatti, we in overall interest of justice, accordingly on 3-7-1996, recalled PW-5 for recording his additional evidence. In his evidence, PW-5 PI-ACB has categorically stated that he was authorized to investigate the offence under the Corruption Act and in support of the same he has also produced the order dated 10-1-1989 Exh. 25 issued by the Additional Chief Secretary to the Government of Gujarat authorizing him the investigation of the offence punishable under the Prevention of Corruption Act. He has also stated that he was PI in ACB office at Godhra. This witness has not been cross-examined by Mr. Budhbhatti. It may be stated here that this point was not raised before the trial court. Anyway, since it is going to the root, we had permitted Mr. Budhbhatti to take that point and in the light of the same, further permitted the learned APP to lead additional evidence. In this view of the matter, the first contention raised above by Mr. Budhbhatti does not survive. Now, with a view to see that such technical points do not unnecessarily waste the precious public time of the Appellate court any further in future, it will be highly desirable if the concerned Investigating officer, if he is below the rank of Dy. S.P while giving evidence before the court in any corruption case also produces a Notification authorizing him to investigate the case. In case if it is not produced at that stage, it will not render the trial invalid. But at the same time, if little extra care is taken, then some times unnecessarily much ado about nothing done on such technical point as done in the instant case does not unnecessarily drain the precious public time which is required to be utilized for the disposal of the other cases and better purpose. In this view of the matter, in the first instance, we would be indeed too happy if the Director General of ACB directs all the raiding officers to be careful enough while giving the evidence by stating the authority under which he is investigating the case by bringing on record relevant authorization. As a matter of fact, in the second instance, it is also the duty of the learned PP in charge of the case when taking examination-in-chief to see to it that on this material part of authorization also necessary evidence is led. And in the third instance, failing the Raiding Officer and learned PP in this regard the learned Trial Judge cannot afford to sit on back-seat doing nothing. He too, in the event of I.O. & P.P failing to bring on record the relevant necessary material authorizing the police officer investigating the case so on to be brought within legal bounds of section 17 of the Corruption Act must immediately intervene and act to avoid scope for any unnecessary technical points to be raised !. This little

but necessary awareness on the part of all concern will save precious public-time and accordingly all should invariably bear in mind.

10. It was next contended by Mr. Budhbhatti that there is no proof of legal and valid sanction on record. The alleged sanction Exh. 15 according to Mr. Budhbhatti was mechanically signed without sanctioning authority applying mind, by sanctioning the prepared draft forwarded by the learned PP for the purpose. According to Mr. Budhbhatti, this was quite evident from the fact that few words written at the top of the sanction were just scored off and the rest of the draft as it is was duly signed. In substance, according to Mr. Budhbhatti, in absence of legal and valid sanction, the trial stands ab initio vitiated. Now there is indeed no substance in this point also. In this regard, first of all, it may be stated that no such point was taken before the trial court. Not only that but as per the list of documents produced at Exh. 9 referring to various documents it also contained the reference to sanction Exh. 15 dated 15-6-1991. Since the learned advocate appearing for the accused had not objected to the same being exhibited, the learned trial Judge by his order dated 25-1-1991 (Ex-9) has ordered the same to be exhibited. Under such circumnstances, when the learned advocate for the accused did not object to the document being exhibited, it was indeed not necessary for the prosecution to still get it exhibited by examining the concerned witness. In this regard section 294 of the Code of Criminal Procedure, 1973 is very clear. The said sanction pertains to provision regarding - 'No formal proof of certain documents. In sub-clause (iii) of the said section, it is provided that - "when the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or proceeding ....." In this view of the specific provision in the Code, in our opinion, when genuineness of sanction Exh. 15 was not disputed it can be read in evidence and accordingly, the defence can not be permitted to rake-up technical contention at this stage which has indeed no substance otherwise. The only reason is this that if indeed the accused was keen to take up this contention, he could have certainly taken up the same before the court during trial. Not to take up the contention at the appropriate stage, time and Court and thereafter to permit the accused to take-up such contention at the appellate stage would be only encouraging a game of hide and seek, and 'as and when he so fancies' which in turn will also be not only unfair to the prosecution, but it will also be quite unfair to the court in as much as it

will be greatly prejudicial to the public time. If the accused despite knowing that compartment in which he was boarding was not the one he ought not to have boarded and still if he boards the same, allowing the train to proceed in that direction and thereafter wants to dispute that this was not proper, that can never be permitted. Under such circumstances, choice is always of the accused and it is required to be exercised before the appropriate forum at the appropriate time. Such pleas are vital pleas. It is a right of the accused, but then that right can not be permitted to turn into the flight of fancy to be taken up at any point of time and as and when one likes. Court proceedings can never be permitted to be taken up for granted and joy-ride !! Mr. Budhbhatti submitted that sanction Exh. 15 was mechanical and shows total non-application of mind of the sanctioning authority. In support of this, he submitted that the sanctioning authority has done nothing except mechanically putting the signature below the prepared draft sent by the learned PP. Making good this submission, he invited our attention to the top of the sacntion letter (EX-15), wherein in Gujarati, it has been stated '"prosecution no mussado" meaning thereby the draft submitted by the prosecution. It appears that when it was asked to be typed out, the Typist somehow inadvertently appears to have typed whatever was there in the original draft and since in the original draft sent by the learned PP it was stated "prosecution no mussado" that has also been mechanically typed out and reproduced ! But then this particular portion is scored out and an initial is also placed therebelow. This clearly shows the application of mind. Had it been non-application of mind, this particular portion would not have been scorred off and further duly initialed. Further, we would like to make it clear that merely because the Investigating Agency had forwarded the prepared sanction draft that by itself is not sufficient to infer and brand it as having been granted mechanically unless it is shown that while sanctioning the prosecution, the concerned authority had no relevant papers before him to apply mind to it to grant sanction. No such point was raised either before the trial court and even before us. Therefore there is indeed no substance in the submission of Mr. Budhbhatti.

11. Further, according to Mr. Budhbhatti, in view of the fact that both the witnesses viz. PW-1 complainant and PW-2 (first panch) having turned hostile, three principal ingredients of the offence of bribe viz., the demand, offer and acceptance were not proved connecting the accused with the crime alleged against him the impugned order of acquittal deserves to be confirmed.

Now, it is indeed too presumptuous to say that merely because the direct evidence comprizing of PW-1 complainant and PW-2 (First Panch) did not support the prosecution case, that is to say their version regarding demand, offer and acceptance have not been proved, the rest of the circumstantial evidence was required to be mechanically thrown off !! Rather, the most important question to be examined in its correct perspective would be "whether these three ingredients viz., demand, offer and acceptance have been if not by a direct evidence, but atleast by the circumstantial evidence even proved on the record or not ?? i.e. whether there is any material by way of proved facts on the basis of which a reasonable inference of demand, offer and acceptance by way of circumstantial evidence could be reasonably made or not ? It is too well known and too eminently, elimentary a principle to be emphasised much less stated that when the prosecution puts up its case before the court, it can hope to succeed on dependable convincing evidence. Now this dependable convincing evidence can be either by way of direct evidence and/or by way of circumstantial evidence. Under such circumstances, when the prosecution witness on the direct evidence turns hostile, it does not necessarily mean that the court should abandon its pursuit for truth and justice half-way by not examining whether there was any other convincing circumstantial evidence on the record connecting the acused with the crime alleged against him or not ! If the court feeling that the direct evidence does not support the prosecution case, and therefore, crying-halt to itself disposes of the case acquitting the accused, then in that case, in our view, it has failed to discharge its judicial duty. The quest for truth and justice should be the mission and passion for every Judge. This holy pilgrimage can not be abandoned half-way. It can not be permitted and tolerated to be encroached upon or obstructed by any witness at his likes and dislikes for whatever reason turning hostile !! If the court surrenders its will to do justice and that to surrendering to the obstructionist quality of the prosecution witnesses, then that court is certainly not qualified to be a Judge to decide a case. The court has to cross the hurdles and encroachments placed on the path of justice and find out whether there was any evidence worth the name, of course dependable, of course convincing, of course lending assurance to its conscience on the basis of which a conviction can be reasonably recorded beyond any manner of doubt, and if indeed there is one, then it is the duty of the court to scan that evidence by coming to the logical conclusion by delivering a justice for which it is meant. Keeping in mind this guiding principle, we ourselves also, when the

matter was called out, initially did feel little doubtful in view of the fact that here in the instant case PW-1 complainant was not supporting the prosecution, not only that but even the independent witness viz. PW-2 (First Panch) had also to some extent given a go-bye to the prosecution case, under the circumstances, whether can we successfully carry our quest for justice further ! Rather on pressing the call bell to our conscience, it responded back telling that the court is not supposed to be way-laid by pranks of some mischievous witnesses, and accordingly, must minutely scrutinize entire evidence and find-out where the truth was !! If Court allows itself to be toyed by such naughty witness that was the end of the matter and the net result would be the judicial power ultimately slipping-out into the hands of the dare-devil, scheming witnesses having no regards for the truth who in turn will indirectly decide the fate of the case as they liked, making the 'Judge' puppet to play to its tunes with remote control in their hands ! It is only when after making all possible efforts that the court feels that there is no hope that the courts shall have to call a day and acquit the accused after examining each and every witnesses, as stated above. At the cost of repetition, it may once again be stated that if the evidence of some of the witnesses is found to be dependable, convincing, and clinching enough and accordingly the court not finding any risk in reaching to the conclusion of guilt, then that evidence has got to be accepted. In otherwords, out of two sets of evidence (i) direct and (ii) circumstantial, if direct is found to be minus and circumstantial plus, the minus cannot be permitted to cancel plus into minus /zero also. Arithmetic of Justice is clear, plus positive, and minus negative, evidence that is the direct and circumstantial evidence stand on their respective footings, whichever inspires confidence can be acceptance and acted upon !! In this case, we have perused the evidence of PW-3 (first panch) and PW-5 PI ACB . Both the witnesses, in our opinion, are found to be of the sterling quality and therefore merely because PW-1 complainant and PW-2 (first panch) have turned hostile, that can not be permitted to give a red signal to this court not to proceed ahead in finding out the truth, and that is the reason why we relying upon the evidence of PW-3 (second-panch) and PW-5 PI ACB, are to record the order of conviction and sentence, and the reason for the same will be given when we will discuss that point hereafter. In fact, the view that we are taking namely that in corruption case, the trial Court even if direct evidence is not supporting the prosecution then even on the basis of the circumstantial evidence, can safely accept, demand, offer and acceptance

of bribe money and record order of conviction and sentence, it is duly supported by the direct Supreme Court decision rendered in case of Hazarilal versus Delhi Administration (Supra), wherein in para 9 it is laid down as under :-

" It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW-3. Under section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to facts of the particular case. One of the illustrations to section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presdume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW-3 who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW-3 the presumption under section 4(1) of the Prevention of Corruption Act is immediately altered. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was therefore rightly convicted by the courts below".

12. Further according to Mr.Budhbhatti, the services of two panchas were requisitioned from the Government office viz. Panam Project Division, Godhra. According to Mr. Bhudhbhatti, this clearly indicates that they were 'selected panchas' on two counts viz., (1) that PW-5 P.I ACB had specially sent his subordinate officer to the office of Panam Project Division, and (2) two panch witnesses being Government servants, they were bound to support the prosecution apprehending departmental action against them, if they failed to support the prosecution case !! Mr. Budhbhatti further submitted that when on

face of it PW-2 and PW-3 were 'selected panchas' thus with the stigma of being selected panch witnesses prima-facie both of them lose their character and credibility as independent witnesses, rather they are the witnesses who have been selected for the obvious purpose by the police with an oblique motive to advance the malicious investigation designed to secure conviction of the accused at any cost. According to Mr. Budhbhatti the Investigating Oficer who is interested in ultimate success of the investigation when he selects a Panch, obviously he would select such panchas only who would be plyable at his instance supporting the prosecution case. Making good this contention, Mr. Budhbhatti has invited our attention to admission given out by PW-3 (second phase) in para-7 of of his cross-examination wherein he has admitted that he was serving in Panam Project for last 21 years. That ACB personnel had come in his office and the Head Clerk and instructed him to go with police. He and PW-2 (First panch) had accordingly gone with the ACB police. Now this contention of Mr. Budhbhatti has only cosmetic appeal, but when carefully screened, it is without any substance worth the name. To mechanically brand panch-witness as a selected panch and thereby resort to excathedra condemnation of his evidence as 'selected panch' and thereafter to ask the Court to disregard his evidence is too fallacious and mischievous an approach to be accepted at its face-value. Much spinned, quite losely alleged, often abused, confused, misunderstood and accepted at face value the phrase "selected panch" requires to be understood in its proper perspective in order to avoid being wandered away from the just and legitimate conclusion. If this much care, caution and circumspection is not exercised, the catch phrase "selected panch" if accepted at its face value is capable of making the court committing serious blunders resulting into unjust, illegal and farcicle acquittal resulting into the serious miscarriage of justice. The importance of a panch as a witness in a criminal trial to lend assurance to the judicial conscience is too well known to be either emphasized or stated even ! He is supposed to be an independent witness and accordingly his evidence lends much needed assurance to the judicial conscience before the order of conviction and sentence is recorded against any accused. The reason is ordinarily panch witness has no personal axe to grind either to falsely support the prosecution or maliciously implicate the accused. His services are called in aid by the Investigating Agency to give true and correct picture of contemprary circumstances of search, seizure or any such other things seen or heard at the place of the incident. Accordingly, when his evidence is found to be honest,

truthful, without any blamish and it inspires confidence of the court, which in turn, further vouch-safes the ultimate cause of justice. In such matters, if the concerned police officer commits some mistake in picking up any wrong person as a panch, then it may seriously recoil upon his hard, honest investigation efforts which may ultimately put the prosecution case in jeopardy and in a given case result into unjust acquittal, when the Court mechanically stamping out the evidence of a police officer as an evidence of interested witness discards the prosecution case, this will indeed greatly prejudice the overall public interest for which the Investigating Agency ultimately exists and which in turn would undermine the ultimate cause of justice. In this view of the matter, the honest and efficient Investigating Officer has a duty to the society to see that the investigation he undertakes is carried out successfully and reaches home i.e., if there is a material on the record the accused is convicted and sentenced. In the same way, if during the course of proceedings if the Investigating Officer feels that there is no material worth the name to sustain the allegation, then in that case, there are provisions in the Criminal Procedure Code where the police do ask for summaries.. The Investigating Officer has to place his case unvarnished before the Court as it is. Under the circumstances, a very heavy rather extremely heavy duty lies upon the Investigating Officer in selecting a panch. He can never be permitted to be casual and indiscreet in requisitioning the services of panchas. If he undertakes the said task casually, then he can not be said to have discharged his duty efficiently because ultimately the investigation which is the foundation stone of criminal justice will suffer which in turn would make suffer the cause of justice. If he is casual, the ultimate effect will be on the society. If he is casual the court will have no dependable material to reach just decision in the case. It is for this specific and obvious reason that the Investigating Officer is supposed to be quite discreet and selective in selecting a panch and therefore in our view selecting of a panch simplicitor can not be said to be something sinful, unholy, illegal and therefore impermissible and accordingly it can not be accepted. In otherwords, it is only when the panch is selected in the conspiracy with the complainant or if the panch is selected ultimately with a view to wreck vengence upon a particular person with oblique and malafide motive then such evidence of a selected panch has to be discarded. When a police officer selects any person as a panch he ordinarily selects him with a view to see that he is not rendered vulnerable and amenable to

the influences of accused and or his friends, associates and relatives who obviously in order to earn easy acquittal would not fail to administer threat, promise or inducement to back out from the case. To this extent the concerned police officer acts legally and within his right to select panch. However, as against this if there is any material brought on the record showing malafide and colourable exercise of power in selecting panch as his mouth piece for securing patently false conviction, then in that case evidence of such selected panch has got to be discarded. Therefore a panch can also be selected in normal ordinary way while while discharging the duty as a good efficient police officer and panch can be selected by malafide colourble exercise of power for false implication. In both these cases, panchas are selected. Therefore, mere lable of 'selected panch' should not by itself be permitted to carry any weight any obsession with the court unless of course it is brought on the record that they were so selected and selected only with a view to see that the honest person was illegally sent behind the bars at any cost. If this material is not forthcoming on the record, you can not simply label out a witness as a selected throwing him out all the considerations and acquit the accused. It is precisely with this view in mind and quite wisely that some useful illuminating guidelines have been given to the concerned Investigating Officers in Gujarat Police Manual, Vol-III so as to enable them to carry out copy book and efficient investigation. In its section-4 under the caption "Panchnama". Rule 180 exhaustively deals with Panchnama. Though the portion relevant for our purpose is only Rule 180 (2)(a) (b), and accordingly, we have reproduced the same, still however, for the general benefit of bench and bar we recommend to carefully study and understand the same.

2(a) In view of the above legal position of panchnamas the panch to be selected should be of mature age, intelligent, litrate as far as possible, respectable, independent, unbiased, impartial, free from objectionable antecedents, not likely tobe influenced by pecuniary or other considerations, free from bodily infirmities or loath-some disease without in any way connected with police and should be selected by the police officer and not by the complainant or any other interested person. When females are considered, female panch should be called in.

(b) Though the panchas should be independent and respectable persons of the locality or neighbourhood (Section 100, Criminal Procedure Code), however, panchas

from outside place can be taken or selected if the investigating officer from his local knowledge considers that indepoendent or persons unconcerned with local faction are not available from the locality.

Bearing in mind the aforesaid Rule, the police officer is mandated to be quite discreet and selective because if he does not take that much care and selects any Tom, Dick and Herry to act as panch then not only he fails to discharge his duty as an honest, efficient Investigating Officer but it was very likely that that said panch witness in the course of time may succumb to any threat, promise or inducement and ultimately won-over by the accused causing great damage to the police investigation ultimately resulting into serious miscarriage of justice. If a person is vulnerable enough to the influences of the accused and/or his associates, friends and relatives and accordingly while giving evidence before the court he turns round, then the prosecution will suffer to the great extent. When we say that prosecution suffer, we say ultimately the society suffers because the prosecuting agency is merely acting on behalf of and for the welfare and protection of the society. So in overall interests of the society also, the Investigating Officer owes a duty to the society to see that only such persons are selected as panchas who are not afraid or in way influenced by the accused. Person when to be selected as a panch must be qualified to be honest, straigh-forward, truthful, bold and fearless enough. Ordinarily, he should be a type of person who is able to withstand being played with and plied in the first instance by the police and in the second instance by the accused and or his friend, relatives and associates. If this much care is not taken, then it is very difficult these days for the ordinary people to resist the accused because by giving evidence before the court we do not know what they are personally gaining, but certainly they are gaining enmity and wroth of the accused, if they venture to give evidence against them and as a result accused go in jail none to protect them in hour of resultant 'self-invited crisis' !! In this view of the matter, the Investigating Officer has to apply himself fully with a view to see that he selects such person right person only as a panch who is strong enough to with-stand any sort of inducement, promise or threat to be influenced to deviate from prosecution case. Therefore, in absence of any material on the record, it would be highly prejudicial to say that when police officer selects a panch he selects him with a view to see that he will depose before the

court whatever way the concerned police officer liked and dictated. One can not and should not draw such unwarranted inferences, presumptions against a police officer in absence of material on record. To draw such unfounded inferences, presumption is not only unfair but sounds little incredible as a Judge.

12.1 Further the contention of Mr.Budhbhati that since two panch witnesses were from the Government office, their evidence should be viewed with great suspicion as an interested witness because if they do not give evidence as per the dictates and wishes of the Investigating Officer, then they may have to face some departmental explanations/actions/proceedings and in this view of the matter, the Government officers giving evidence under fear, pressure complex can not be said to be honest, truthful, independent witnesses. This contention of Mr. Budhbhatti also does not have any substance because the entire submission of Mr. Budhbhatti proceeds on an unwarranted and erroneous assumption that when an Investigating Officer selects a panch, he selects a panch with a view to see that they act at his behest, dictates and under his thumb anyhow connecting the accused with the crime ultimately lending him in jail. Thus, this very genasis of argument of Mr. Budhbhatti is as wrong as it could be because in that case we have to proceed on the assumption that moment the police officer receives an information and pursuant thereto requisitions the service of panchas, he has to investigate the case with an angle only of securing the conviction. Such a prejudicial approach can not be said to be a judicial approach, the reason being merely because the complaint is filed before the police that does not necessarily mean that the police officer has to necessarily toe the wishes of the complainant and fabricate and collect the data in a manner only which ultimately connects the accused with the crime lending him in a jail. The reason is that even after receiving a complaint, the Investigating Officer has to independently investigate the case meaning thereby to investigate the case thoroughly, fairly and honestly and in case if no substance is found, then as a net result of the investigation will say that there is nothing on the basis of which anything can be done and report will be accordingly placed before the appropriate court. Under the circumstances, we are not prepared to proceed wearing a glass of prejudice against the police officer that moment he starts the investigation, he starts it with an aim of securing conviction. Therefore if the Investigating Officer requisitions the services of the panchs which is his duty to call for the services of the

panchas, the panchas also will act as honestly and independently as they are required to do. Further merely because the panchas are Government servants, that can never be a ground to throw away their evidence over-board mechanically. The identical question firstly, questioning the independence of panch witnes on the ground that they were Government servants, and secondly, the police officer is interested in success of the investigation the same cannot be accepted and relied upon, arose in the case of STATE OF GUJARAT Vs. RAGHUNATH VAMANRAV BAXI, reported in AIR 1985 SC, 1092, wherein negativing the same in para-5 the Supreme Court observed as under :

"In appreciating oral evidence, the question in each case is whether thewitness is a truthful witness and whether there is anything to doubt his veracity in any particular matter about which he deposes. Where the witness is found to be untruthful on material facts that is an end of the matter. Where the witness is found to be partly truthful or tospring from tainted sources, the Court may take the precaution of seeking some corroboration, adequate and reasonable to meet the demands of the situation, but a Court is not entitled to reject the evidence of a witness merely because they are government servants, who, in the course of their duties or even otherwise, might have come into contact with investigating officers and who might have been requested to assist the investigating agencies. If their association with the investigating agencies is unusual, frequent or designed, there may be occasion to view their evidence with suspicion. But merely because they are called into associate themselves with the investigation as they happened to be available or it is convenient to call them, it is no ground to view their evidence with suspicion. even in cases where officers who in thecours of their duties, generally assist the investigating agencies, there is no need to view their evidence with suspicion as an invariable rule. For example, in rural areas, investigating officers would ordinarily think of calling the village officers, such as, the head man, the Patel, or Patwari to act as panch witnesses, as they are expected to be respectable persons of the locality. It does not mean that their evidence should be viewed with suspicion because they are Government servants or because they are

> generally associated with investigating agencies whenever there is a crime in the village. For that matter it would be wrong to reject the evidence of police officers either on the mere ground that they are intersted in the sucess of the prosecution. The Court may be justified in looking with suspicion upon the evidence of officers who have been demonstrated to have displayed excess of zeal in the conduct and success of the prosecution. But to reject the evidence of all official witnesses as the High Court has done in the present case, is going too far. We think that it is extremely unfair to a witness to reject his evidence by merely giving him a label."

In the instant case, undoubtedly though both the Panchas are Government servants and that too from the same office, yet one of them viz., PW-2 (Panch No. 1) has not supported the prosecution. While PW-3 (Panch No.2) has supported the prosecution. Now if the apprehension of Mr. Budhbhatti had any semblance of substance that if a Government servant acting as a panch does not support the prosecution, there will be some departmental action against him, then in that case, PW-1 apprending that departmental action would not have dared turned round and yet the fact remains that PW-1 has not supported the prossecution ! In this view of the matter, there being no substance in this contention, the same deserves to be rejected and is rejected accordingly. The learned Judge, unfortunately, mechanically swayed by the lable of 'selected panch' without making any honest and sincere efforts as to what is the actual meaning of the phrase 'selected panch' as to whether they were interested in falsely implicating the accused having any interest to be shared with the complainant or the Investigating Officer has straighway accepting the same, acquitted the accused on unjust, unwarranted assumptions. This way of jumping in dark and deciding the case is quite distatesful and nothing else and less but just short-cut of giving the dog bad name and hang it. This cannot be done by the Courts accountable for doing justice ! We are of the view that henceforth whenever on behalf of the accused, plea of 'selected panchas' is raised it shall be the endeavour of the trial Court, in the first instance, to find out whether witnesses dubbed as selected witnesses have any axe to grind in falsely implicating the accused and securing conviction at any cost. If the trial Court comes to the conclusion that panchas were not selected as a witness to be at the back and call of the police officers and complainant to give false evidence at any

cost before it, than such mischieveous label of selected panch should not deter the Court from accepting and relying upon his evidence. In this view of the matter, contention raised by Mr. Budhbhatti having no substance stands rejected !!

13. It was next contended by Mr. Budhbhatti that the evidence of PW-5 PI ACB being an evidence of the police officer was quite a tainted evidence inasmuch as he being interested in success of such investigation and therefore the same standing by itself can not be taken into consideration for the purposes of basing the order of conviction and sentence, more particularly, when pw-1 complainant and PW-2 (First-Panch) had given complete go-bye to the initial prosecution story connecting the accused with the crime alleged against him. In this regard, it may be stated that once again that on quite an unjust groundless, uncharitable and erroneous assumption that every police officer is dishonest and interested in success of investigation at any cost, prosecution cannot be mechanically thrown away. We do not for a minute even suggest that in all cases wherein the complainant and the panchas do not support the prosecution, irrespective of the attending facts and circumstances of that particular case, place mechanical implicit reliance upon the evidence of the Investigating Officer and record the order of conviction. No. This is never done. That can not be done. That can not be, because it is ultimately a matter of appreciation of evidence on the record in the light of cross-examination and the attending circumstances upon which the Court is required to record its own just and legal conclusion whatever way it ultimately turns out to be. But at the same time, it can not be accepted as a straight-jacket, rough and ready formula that merely because the Investigating Officer was allegedly interested in the success of investigation, his evidence should be strighway kept out of consideration rather rejected. Every dispassionate and objective Judge knows that Police officer like any other witness is supposed to be honest, independent witness till the time his evidence in the cross-examination is rendered doubtful, shattered by proving the improbabilities, contraditions, material inconsistence, improvements, ulterior motive of false implication, etc. Under the circumstances, whenever court is called upon to appreciate the evidence of the Investigating Officer, it is not supposed to look to its right or left ie., to say either to proceed on assumption that because he is a Police officer and interested witness, therefore, reject his evidence or accept his evidence because he has stated something in his examination-in-chief making out a case

against the accused. The court has to steer clear from the mechanical approach and test the credibility of the Police Officer on touch stone of probailities and other material brought out in the cross-examination impairing or otherwise sustaining his credibility, satisfy its conscience and reach just conclusion on the basis thereof of acquittal or conviction. This certainly comes from the conscience deep within of the court and not from either the assertions made by the learned PP pressing hard for the conviction or the assersions coming from the defence counsel. It is ultimately the court's conscience which has to test the absolute credibility of the witnesses before placing the implicit reliance. If after taking into consideration the attending circumstances of the case and closely scrutinising the evidence of the witnesses, if indeed there is nothing on the basis of which his credibility can be doubted and still by applying the lable test that he is a (selected witness) or "interested" in success of the investigation, his evidence is to be discarded, then we are quite afraid that there is no question of examining the Investigating Officer and/or for that purpose any witnesses because all the Investigating Officers, as alleged, are interested witnesses. If we are to lightly accept such wild, mechanical, fanciful allegations against the Investigating Officer, then let there not be any power vested by the Criminal Procedure Code in the Investigating Officer because what is fun of vesting the powers in the Investigating Officer meaning to say when they are examined, they do not command any credit, respect at the hands of the Court. Further to reject the evidence of the Investigating Officer arbitrarily affixing the lable of interestedness in success of the investigation, it would indeed be quite harsh and unjust to the concerned police officer also who in a given case has invested his honest, best of efforts in public interest to book the criminal and bring about the justice. Infact, not to accept the evidence of credible police witness merely on the ground that he is interested in success of the investigation would be absolutely prejudicial, and therefore, an unjudicial approach which not only never guarantees the justice being done, but rather it is frought with all potential danger of injustice brought in and the real accused going scot-free. In this view of the matter, the court is required to be on extreme caution while appreciating the evidence of the police officer. Further, assuming for the time being for sake of argument that the Police officers are intersted in the success of the investigations than that at the most warrants his evidence to be closely scrutinized before placing the

implicit reliance upon his evidence but that does not and indeed can never be a ground to straighway declare them not reliable, unworthy of credit, if they are found to be dependable enough without there being anything brought on the record to impair their otherwise credibility as a witness of truth. Accordingly, at the cost of repetition, it may be stated that unless a case is made out highlighting the attending circumstances and something in the the cross-examination disentitling him to the credibility, the evidence of the police officer should not be mechanically rejected on the ground of being interested in success of the investigation. As a matter of fact, the Supreme court in its decision rendered in the case of STATE OF GUJARAT VS. R.V.BAXI (supra) has in terms stated in para-5 that the evidence of the police officer should not be viewed with suspicion merely because he is interested in success of the investigation, unless he has demonstrated to have displayed excess of zeal in the conduct and success of the prosecution. To this, we may add here that there is nothing brought on the record to show that the complainant (PW-1) and the PW-5 PI ACB have conspired to falsely implicate the accused with the crime alleged against him. Similar are the observations of the Supreme Court in a decision rendered in the case of STATE OF UP VS G.K.GHOSH, reported in AIR 1984, SC 1453, wherein in para 11, in unmistakable terms, it has been stated that evidence of the Investigating Officer can be relied upon for the purpose of recording order of conviction and sentence. Bearing in mind aforesaid two Supreme Court decisions, we have carefully scanned the evidence of the PW-5 PI-ACB. His evidence has indeed quite impressed us as an evidence of honest, straight-forward and truthful Police officer. There is nothing in his cross-examination by way of whisper even impeaching his credibility or reason to doubt about the overall probability of the case in favour of the prosecution. In fact, while closely scrutinising the evidence of PW-5 PI-ACB we have carefully looked around the attending facts and circumstances also to steer clear of some remote possible doubt even to avoid false conviction at our hands, but nothing has been found. Infact, his is the evidence beginning with beginning of the prosecution case when PW-1 complainant on 17-7-1990 approached him and lodged the complaint at Exh. 11 taken down by him duly signed by the complainant. He has further stated how he requisitioned the services of two panch witness; how pre-trial anthrecene powder test was carried out; the amount of Rs. 800/= produced by PW-1 himself, preliminary panchnama (Exh. 13) bearing the signature of two panch witnesses and himself; how they went to

Ranakpur outpost; when PW-1 complainant and PW-2 (first panch) entered Ranakpur Outpost; regarding pre-arranged signal given by Panch, his rushing to the office alongwith PW-3 (second panch) and carrying out the post-raid ultra-violate lamp/anthrecene powder test and finding the fingers, thumb and palm of both the hands of accused smeared with anthrecene power; recovery of currency notes of Rs. 800/= smeared with anthrecene powder from the leather vallet; bearing the very same numbers which were noted down in the first part of panchnama Exh. 13; drawing second-part of panchnama Exh. 13 which was over at 12-15 noon on the same day etc. etc. We have also closely scrutinised the cross-examination of PW-5 PI ACB and there is indeed nothing on the basis of which remotely even we can doubt his credibility. Not only that but we have been very much impressed with the evidence of PW-5 so much so that in our opinion the evidence given by the PW-1 complainant before the court turning hostile was clearly as a result of being won-over to sabotage the prosecution case. Further indeed there was no earthly reason for PW-5 to concot a false case and take a false complaint Exh.11 wherein PW-1 complainant has admitted his signature, though remained silent regarding its contents. PW-1 is a witness who in one breath states that Rs.800/= were given by the police officer, and in his cross-examination, in the second breath, he has admitted that I (he) had given that Rs. 800/-. This is a type of PW-1 complainant ! This is how he has turned hostile. This is how he wants to sabotage the entire prosecution case. This is how he wants to dupe the courts taking it as thoughtless gullible child. The manner in which the PW-1 has given evidence before the court leave us with no other impression except that after filing the complaint he has let down the prosecution. He is not merely hostile, but on the basis of material available on the record, we would like to stamp him as a lier. He is a lier who is suppressing the truth, a lier who is deliberately giving false evidence to save the skin of the accused. Taking into consideration the fact that PW-1 complainant is an illitrate Adivasi one would not be surprized if accused having been successful in administering threat to turn hostile !! Now when the Court has an occasion to appreciate evidence of such witness who has deliberately not supported the prosecution and yet if the benefit is to be given to the accused, then there can not be any other better example of perverse approach than to acquit him on the ground that this witness has turned hostile. Similar are our reactions on reading the evidence of PW-2 (first panch) whom the learned PP was constrained to declare hostile. This witness while giving evidence

before the court has either deliberately made the convenient summer-salt with a view to render his own evidence little doubtful so that the court may not place reliance upon him and whatever benefit of acquittal can be gained and given to the accused and/or committed memory lapse because of time-gap between the incident and evidence recorded in the Court !! In his examination-in-chief he has not supported the prosecution on two facts firstly, that Rs.800/- were given by the PSI to him and not as stated by the PI that the complainant had produced the amount which was kept with him. Similarly, he also admits that PW-1 took out Rs.800/= from his pocket which was taken by the accused and kept in the leather vallet lying near-by. He also admits that thereafter PW-1 complainant went out and gave the pre-arranged signal, whereupon the raiding party rushed in and examined the hands of all persons in the light of ultra-violate lamp. Once again at the crucial juncture he has tried to creat a doubt by saying 'except PW-1 complainant, accused and himself, others' hands were not seen under the ultra-violate lamp'. It is here that he has tried to create a doubt that no Anthrecene powder marks were found either on the hands of the accused or the complainant. Now once again in para-3, he admits that panchnama, Exh. 13 shown to him, was the very same panchnanama and another panch has placed his signature in his presence. Thereafter he has been confronted with his previous statement wherein in para-4 he has admitted that after his services were requisitioned, PW-1 complainant disclosed his name as Natha Lemba, resident of Nana Bansia, he and other panchas were introduced to him. He has further admitted that we two panchas and PW-1 complainant were introduced with ACB staff. He has also admitted that PW-1 had also posted him with the fact regarding the contents of the complaint Exh. 11. In substance, he has admitted most of the part of the first and second part of the Panchnama (EX-13). He has also admitted in his statement that thereafter the hand of the accused was seen in the ordinary light where no marks were noticed, and thereafter when it was examined in the light of ultra-violate lamp the fingers, thumbs and palms of both the hands were found shining with bluish colour. He has also admitted that the currency notes taken out from the leather vallet were bearing the same currency notes and were found to be smeared with Anthrecene powder when they were examined under ultra-violate lamp. This is the overall evidence of PW-2 (first panch). However, with a view to create a suspicion about his own evidence, he has tried to give little go-bye to the proseuction evidence which ultimately he admits. In cases wherein the witness is declared hostile and when he is confronted

with his previous police statement and thereto when he denies to have stated so, then that circucumstance stands entirely on a different footing than the statement wherein he admits that he had given the statement. Now if a witness admits to have given a statement at the relevant point of time and voluntarily states so, then in that case, it is a case where the witness has been won-over with an understanding to give evidence in such a manner where it may create some doubt. Such trickeries and playing with the court proceedings are required to be dealt with quite strictly and we are going to issue notices against PW-1 complainant and PW-2 (first panch). We cannot be a passive spectator to such an unholy alliance between PW-1 Complainant and PW-2 (first panch) first laying the foundation of the prosecution case at the investigation stage, and thereafter conveniently sabotage the same at trial. In fact, looking to the increasing tendencies these days of Panch witnesses turning hostile, time has indeed come when the trial Court shall have to relentlessly excert and issue notices to plyable witnesses for giving false evidence, and in appropriate case to prosecute them. In case if ultimately it is found that the investigating officer has drawn false panchnama, the trial Court should not feel hesitant to take appropriate action against him also for his gross abuse of power !! The sum total of appreciating the evidence of PW-1 and PW-2 is that though they have been declared hostile, their hostility is feigned one only with a view to help the accused and when the court reaches this conclusion on overall reading the evidence, then in that case, accepting the evidence of the hostile witness and to discard the evidence of PW-3 (second panch) and PW-5 PI ACB would be simply not only indiscreet but scandelous on the part of the Judge. Merely because a witness is declared hostile, therefore whole of his evidence is required to be kept out of consideration is not the law. The law is, to the extent it supports the prosecution can be accepted and relied upon. If on the proved facts, if reasonable inference is possible viz. that these witnesses are liers and have been won-over only with a view to save the skin of the accused, then in that case, while appreciating the evidence of such witnesses, it can be read as supporting the prosecution indirectly. In this view of the matter, we refuse to get our vision blurred with dust in eye attempt made by the PW-1 complainant and PW-2 (First panch). The court while doing justice has to do justice with all pragmatic approach and is not supposed to act like a gullible child accepting whatever has been stated by PW-1 complainant and PW-2 trying to mislead the court putting it on wrong track by handy instrument of making

witnesses hostile to the prosecution in the hands of the accused cleverly engineering his acquital. We having carefully examined the entire set of prosecution evidence, feel absolutely safe in accepting and relying upon the evidence of PW-3 (second panch) and the evidence of PW-5 PI ACB. As we stated above, even the hostile witnesses indirectly deem to be supporting the prosecution case, but for the magic which has taken place out side the court compound.

14. It was next contended by Mr. Budhbhatti that the charge against the respondent reflects one integrated story, namely the demand of Rs. 1000/=. The first demand of Rs. 200/- was made in presence of several witnesses and the proseuction has not examined any of those witnesses though cited in the chargesheet. In this view of the matter, the adverse inference must be drawn against the prosecution. Not only that, but such non-examination of the important witnesses was also counter-productive to the prosecution rendering whatever rest of the evidence available to the prosecution quite doubtful. In this regard, reliance has been place on the Supreme Court decision rendered in case of (i) Haridev Sharma Vs. State (Delhi Administration), reported in AIR 1976, SC, 1489. Now this contention of Mr. Budhbhatti on close scrutiny in facts and circumstance of this case, it is found to be without any merit. In fact, taking into consideration the eivdence of PW-5 PI ACB, who himself recorded the complaint Exh. 11, admittedly signed by PW-1 Complainant speaks about the integrated story of demand and acceptance of Rs. 200/= and of Rs. 800/- to be paid on the next day. This, in our opinion, does disclose an integrated story, and as stated above, we have no reason to doubt of evidence of PW-5 PI-ACB and for that purpose recording of complaint Exh. 11 by himself. Not only that, but merely because those witnesses regarding demand of Rs.200/- are not examined that again cannot set at naught the evidence of PW-5 PI ACB who recorded the complaint in his presence, wherein the entire story has been narrated. In this regard, we believe that PW-5 PI-ACB has no reason to lie before this Court. In this view of the matter, the contention that integrated story of the prosecution is not established does not appeal to us and we dismiss the same accordingly....

15. It is was further contended on behalf of the respondent that the charge framed against accused was improper and defective. Now Charge Exh. 5 reads that on day before yesterday (Sunday) prior to 17-7-1990, the accused told PW-1 complainant and others that there was a

complaint against him about taking away the wood from the Government land, and accordingly all would be sent to jail if it was not to be settled. Accordingly, if they wanted to avoid jail, the accused demanded Rs. 1500/= to settle the matter, ultimately, the accused demanded Rs. 1000/= out of which the complianant paid Rs. 200/= and remaining amount of Rs. 800/= was agreed to be paid in the morning on Wednesday at Ranakpur Outpost Police Station. PW-1 complainant thereafter gave complaint to PW-5, PI-ACB Godhra in this regard and the raid was arranged. The charge further reveals that at about 12.15 noon on 18-7-1990 the accused demanded Rs. 800/= for aforesaid object and purpose, and the accused accepted it. Thus, accused being a public servant accepted illegal gratification for doing the official work and the said sum was not by way of legal remuneration and accused thereby committed offence under section 7 of the Corruption Act. In para 3 of the charge, it is alleged that at the aforesaid time and date and as part of the said transaction, the accused obtained pecuniary advantage of Rs. 800/= by way of illegal gratification in connection with Government work and thereby committed offence under section 13 (1)(d) read with Section 13 (2) of the Act. In our considered view, we do not find any substance in the submission of Mr. Budhbhatti for the following reasons. Having regard to provisions ofSection 215, 221 and 464 of the Code of Criminal Procedure, lapse and/or omission in charge would not vitiate the trial. True, that regarding the first part of the charge in respect of demand, payment and acceptance of Rs. 200/= the prosecution has not examined witnesses named in the chargesheet but from this it cannot be concluded that the prosecution case with regard to demand, acceptance and recovery of Rs. 800/= should also be discarded, particularly when it is substantiated by cogent and convicing circumstantial evidence, comprising of PW-3 (second panch) and PW-5 PI ACB. It is true that there is some error in the time stated in the charge, but then thereby accused cannot be said to have been prejudiced !! In judging a question of prejudice, as a guilt, the Courts must act with broad vision and look to the substance and not to the technicalities and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts in connection with illegal gratification of Rs. 800/= sought to be established against him were explained to him fairly and clearly, whether he was given full and fair chance to defend himself. This test is clearly fulfilled in the facts and circumstances of the present case. Therefore, the two fold submission that (1) the charge was defective and has

caused any prejudice to the accused and (2) in the absence of proof of part-payment of illegal gratification, the evidence and the proof with regard to illegal gratification of remaining amount of Rs. 800/= should be given go-bye, has no merit and therefore this contention requires to be rejected.

16. It was further contended by Mr. Budhbhatti that it is simply unbelievable that after stepping down from the jeep at 8-30 AM, PW-1 Complainant and PW 2 (First Panch) who went walking to the Ranakpur police out-post covering fairly long distance of 1 km. could have at 8.45 a.m signalled the raiding party and the whole show to be over within fifteen minutes !! According to Mr. Budhbhatti, this story is highly improbable and unnatural to be accepted at its face value as in such a short span of time, distance of 1 Km. could not have been covered ! This argument of Mr. Budhbhatti simply fails to impress us because the distance of 1 km. given by PW-2 appears to be an approximate. Further more, if a man walks with an ordinary speed, he would cover about 4 to 5 miles in an hour meaning thereby 1 km. distance could be easily covered within 15 minutes. On this point, there is no cross. Apart, we do not find any improbability in PW-1 and PW-2 (Panch No.1) covering the distance within 15 minutes and thereafter PW-1 giving the pre-arranged signal. In fact, Panchnama Exh. 13 clearly shows that second part of it which was drawn at the Ranakpur out-post was completed at 12.15 noon. This clearly belies the assumption rather assertion of Mr. Budhbhatti that everything was hushed up within short span of 15 minutes. In this view of the matter, this contention having no substance is rejected accordingly.

17. Further, according to Mr. Budhbhatti, PW-3 (second panch) has stated in his examination-in-chief that anthrecene powder marks were found only on the finger-tips of the accused which is counter to the evidence of PW-5 PI ACB, therefore, there is no consistent evidence on the point of finding of Anthrecene Powder marks on hands of accused persons. This submission of Mr. Budhbhatti has no substance, the reason being, merely because one Panch-witness does not mechanically reproduce entire evidence on the record, some such minor insignificant omission cannot be permitted to be made mountain of the mole-hill. The Court while appreciating the evidence is required to take mature and pragmatic view of the matter bearing in mind the time factor that is to say the date of the incident and date of recording evidence before the Court which many a time results into fading, lapsing of memory.

18. It was next contended by Mr. Budhbhatti that this being an acquittal appeal, we should not lighly interfere with it more particularly when the foundation stone of the prosecution case viz. PW-1 complainant having given go-bye to his alleged case has given a rude-jolt to the prosecution story collapsing the entire story. Now, in acquittal appeal, we are indeed quite conscious about the crytalized legal position that if sitting as a trial court, even if we could and accordingly would have taken a different view of the matter, that is to say, reversed the acquittal and convicted the accused - that situation standing by itself also would not matter to be a sufficient ground to set aside the order of acquittal. But in our opinion that is not the case here. Here is the case where there is no question of two views possible. As already stated above, the trial court has completely overlooked the fact that in bribe cases even if the direct evidence brought on the record did not support the prosecution then even depending upon the circumstantial evidence on the point of demand, offer and acceptance of bribe amount, the order of conviction and sentence can reasonably and safely be recorded on the basis of the evidence of PW-5 PI, ACB and PW-3 (second panch). Not only that but the trial court has also unfortunately erroneously proceeded yet on two more, altogether patently false and unwarranted assumptions viz., (i) that the Investigating Officer being interested in success of the investigation and (ii) the panchas were 'selected panchas', they cannot be relied upon !! Now, this indeed is too perverse and perplexing view point to be meritted judicial one which can ever be sustained in this acquittal appeal !! This, as discussed above, is not the position of law in absolute sense. Further, in this regard, we have already discussed about the unworthy evidence of the PW-1 complainant. We have also discussed how the trial court ignored the material aspect. We have also discussed that prosecution case can be proved either by the direct evidence and/or circumstantial evidence, and if the direct evidence was wanting, and if the circumstantial evidence available on record was clinching enough to connect the accused with the crime alleged against him, then that can be accepted without any reservation !! For establishing the material ingredients of the offence of bribe viz., demand, offer and acceptance, there is no rule of law that it should invariably be by way of direct evidence only ! It can be proved by circumstantial evidence also, if that is available on record. In the instant case, the circumstances which emerges from the evidence of PW-5 PI-ACB are - that PW -1 complainant had

approached him alleging that the accused was demanding bribe amount and for that complaint (EX-11) was lodged, that was admittedly duly signed by PW-1 in his presence, then the services of two panchas were requisitioned; pre-raid and post-raid Anthrecene powder tests were carried out; over and above the evidence of two hostile prosecution witnesses viz., PW-1 complainant and PW-2 (First panch) there is definite evidence of PW-3 (Second panch) and PW-5 PI-ACB who has fully supported the prosecution case regarding the recording of FIR (Exh.11) drawing the preliminary panchnama, Exh. 13; thereafter going to Ranakpur outpost; PW-1 and PW-2 walking the distance to Ranakpur outpost; thereafter on receipt of the pre-arranged signal; raiding party swooping, post-raid Anthrecene powder test carried out; thumb, fingers and palm of accused found smeared with Anthrecene powder, also currency notes found smeared with Anthrecene and tallying with the numbers already noted down earlier in the first part of panchnama Exh. 13. These are some of the most material pieces of circumstantial evidence proving the prosecution case beyond doubt which have been altogether ignored by the trial court and that too merely because two witnesses viz. PW-1 complainant and PW-2 did not support the prosecution. On screening the evidence of PW-1 Complainant and PW-2, we have a reason to believe that both of them were out and out liers deliberately not supporting the prosecution case. They were won-over and accordingly were out to destroy the prosecution case. If these are the inevitable conclusions, then we can certainly rely upon the circumstantial evidence and if that is found to be clinching, we are duty bound to record the order of conviction and sentence.

19. Further according to Mr. Buddhbatti, since the FIR Exh. 11 is not taken in the printed form, it does not inspire confidence and therefore it makes the entire prosecution case doubtful right from its inception. Now, it is true that ordinarily the complaint should have been recorded in a printed form. It is equally further true that Exh. 11 FIR brought on the record is not in the printed form. However, we do not know under what circumstances it was not taken down in the printed form. May be at the relevant time, as we know sometimes stationery is not provided by the Government because we have seen in one Suo-motu petition, wherein it has come to our notice that sufficient number of summons forms/witness forms, stationery, type-writers, etc. etc., were not provided to some courts by the Government ! Under the circumstances, had this question been specifically put to PW-5, PI-ACB in his cross-examination, then he would have given an

appropriate answer to it as to why FIR was not recorded on the printed form. Now, not to raise/ask such a vital question at the appropriate stage to PW-5 PI-ACB who recorded FIR Exh. 11 and then at his back to ask this Court to draw some wild inferences against him is just to condemn him without giving him fair and reasonable opportunity to meet with the allegation. This is simply unjust, unfair to the PW-5 PI-ACB. To raise any argument before the Court on such points the defence has to first of all lay foundation for it by putting the relevant questions to the concerned witness - to be fair and honest enough to him. If this exercise is just not done, no super structure of arguments can ever be allowed to be raised without there being any foundation stone. Even assuming that FIR Exh. 11 was not recorded in the printed form, then even in absence of anything alleged in the cross-examination against PW-5 PI-ACB, at the most it is an irregularity, which on the face of it, not being fatal, can not be taken as shaking the overall credibility of the prosecution case.

20. In support of various contentions, Mr.Budhbhatti leaving no stone unturned has submitted number of High Court and Apex Court decisions - practically digest on some points pertaining to corruption cases. Some of them were read before us. We have carefully considered. But as stated above, decided case law are indeed of great assistance to the court, but at the same time, ultimately the court has to decide itself the case on the facts before it and find out whether the said decisions are directly applicable. If the evidence lead before it by the prosecution inspires confidence, then it is the duty of the Court to record the order of conviction and sentence. As against this, if that evidence does not inspire the confidence, then by no efforts of anyone, accused can ever be convicted ! Ultimately the decision is of the concerned court which is required to be taken as per the facts and circumstances of that particular case, satisfying its conscience and thereafter as per the dictates of its conscience. In this view of the matter, with respect, dealing essentially with the facts and circumstances of the present case, we have not referred and reproduce all the authorities.

20.1 When the Supreme Court or for that purpose even any High Court decide the cases, two resultant situations emerge therefrom. First of all, if it decides on the point of law laying down the same, then it has a binding effect upon the subordinate Courts. But as against this if it decides merely on the facts, then that fact standing by itself has no relevance, binding effect and

accordingly any precedentiary value commanding subordinate Courts to invariably follow the same without questioning. Now in bribe/corruption cases success of the prosecution depends upon the proof of three material ingredients viz., that of demand, offer and acceptance. The proof regarding this can be brought home either by way of direct evidence and/or circumstantial evidence. Now the decision on the points viz., (1) whether an offence of bribe can be held proved on circumstantial evidence ? YES (2) whether mere selection of government servants as a panch witness can be said to be selected, ipso facto affecting the overall independence and the resultant credibility ? NO; and (3) whether Investigating officer being an interested witness in success of Investigation his evidence should not/cannot be relied upon ? NO. These are the questions and the resultant ratio decidendies. Accordingly, subordinate Courts are bound to follow the same. But as against this (1) whether the alleged circumstances connecting accused with the crime are proved beyond doubt or not ? (2) Whether the selected panchas are selected with ulterior motive to frame up innocent person ? and (3) Whether the Investigating Officer was unfairly interested in success of the investigation of secure conviction of accused at any cost or not ? - are within themselves question of fact. Answers to these questions are pure questions of fact and the trial Court has to decide it accordingly. Accordingly, once the trial Court is satisfied that prosecution has proved circumstantial evidence beyond doubt, there is nothing to discredit selected panch in cross-examination and IO had also fairly and honestly investigated the case, there is no reason on that basis of which accused cannot be convicted !! Under the circumstances, only and only when the evidence of the Investigating Officer and the panchas is found to be of the doubtful nature on the basis of something emerging from their evidence, their evidence otherwise cannot be lightly rejected. In this case, we have relied upon the decision of the Supreme Court, the same being (i) Hazarilal v. Delhi Administration (Supra) and (ii) State of UP v. G.K Gosh. These are the decisions on the point of law, namely, demand, offer and acceptance three principle ingredients of the offence of bribe can be believed ie., reasonable inference can be drawn from the proved circumstances brought on the record. In other words, even if complainant and the first panch witness do not support the prosecution, yet purely on circumstantial evidence of PI, ACB and second panch witness prosecution case of demand, offer and acceptance can be reasonably inferred and safely accepted. Similarly, the evidence of the raiding officer can be accepted and relied upon and

is not to be discarded, branding him as interested in the success of Investigation, if there is nothing in his cross-examination to disentitle him to create doubt against his credibility.

21. In view of the aforesaid discussion, on the basis of circumstantial evidence on the record consisting that of PW-3 (second panch) and PW-5 PI-ACB, the prosecution having brought home the charge against the accused, we have indeed no alternative left but to reverse the perverse order of acquittal passed by the trial court converting it into the order of conviction under Section 13 (1)(d) read with Section 13 (2) of the Act.

22. This takes us now to yet one more important question to be dealt with namely what would be the just and proper sentence ? In this regard, the respondent-accused being very much present before the Court on putting questions to him as to what he has to say regarding the sentence,he submitted that he is the sole bread-winner in the family consisting of his wife and six children, out of which the eldest one is 15 years old son and the youngest is 5 years old son. In between five minor children one of them is only daughter aged 13 years. He further submitted that he is at the fag end of the service career and only two years were left. and accordingly, a lenient view may be taken while awarding the sentence.

22.1 As against this, the learned APP submitted that the accused is serving in police department, which is expected to maintain the law and order and protect the society from the crimes and harassment. He further submitted that the accused was posted at the Out-post in Adivasi area. In this view of the matter, he being the only Constable in the area, it was all the more his further duty to see that he discharged his duty honestly and faithfully to protect Adivasi people. Instead of that, as we find from the prosecution evidence, he has accepted the bribe of Rs.800/- and that too for settlement of a case under the Forest Act from Adivasi. In this view of the matter, according to the learned APP, this court should take quite a stricter view of the matter to set things right while awarding the sentence. In this regard, the learned APP has also relied upon the decision of this court rendered in the case of NAZIRMIYA H MALIK VS STATE OF GUJARAT reported in 1993 (1) GLR, 853 (PARA-12),and AIR 1961 SC 44 (Mysore) (PARA-11). 1958 Rajasthan Law, 596-KISAN DAYAL VS STATE (PAGE-492-4923).

22.2 Having heard the accused and thereafter the learned APP on the point of sentence, we endorse the view taken by this High Court and Mysore High Court that the corruption has become cancer in the society which is eating away its vitals and therefore such cases are required to be sternly dealt with by imposing deterrent sentence. When the public servant and that too a police personnel who is expected to serve the public becomes corrupt, abusing his position, then in that case, to take a lenient view of the matter and to impose only minimum sentence would not meet with the ends of justice. In the instant case, over and above the detected case for which the trap came to be arranged, the accused ordinarily must have abused his position demanding and accepting bribe amount otherwise this dare-devil quality to demand bribe and that too the day light robbery in police station itself would not come to him and he will not muster the courage very immediately. As against this ground pleaded by accused to take a lenient view of the matter while awarding sentence has no substance. The grounds such as lone bread-winner of the family, large family, old parents, losing service are quite ordinary which in our poor country is quite common. In absence of special and adequate reasons other than above, it is not possible to take lenient view of the matter. At the same time, while bearing in mind the impending absolute necesity of eradicating corruption, the court has also to take into consideration some such circumstances where permissible charitable view is possible and can be taken In the instant case, the offence took place on 18-7-1990 that is to say, by today. six years would be over after about 13 days. The accused has already undergone the suffering as an under-trial prisoner, he has also undergone hanging-sword of acquittal appeal pending over his head and further since in between 6 years have elapsed, we feel that taking into consideration all these facts and circumstances along with the gravity of offence, the ends of justice would quite meet if he is ordered to undergo RI for 18 months and a fine of Rs. 5000/- and in default, to undergo further RI for three months. We make it quite clear that in the instant case, if indeed on the alleged fact at the end of trial we were to impose a sentence, we would not have hasitated in imposing sentence less than five years R.I. (subject to the special and adequate acceptable circumstances highlighted by him, to take lighter view of the sentence) because we have come at such a sorry pass where but for deterrent punishment, firstly it is indeed not possible to prevent corruption in the society and secondly to sustain the credibility of the court as an institution interested in preventing the corruption in the society. However, we

have refrained from imposing the said sentence for the reasons already given above.

23. In the result, this appeal is allowed. The impugned judgment and order of acquittal passed by the trial court is quashed and set aside. The respondent-accused is convicted for the alleged offence punishable under section-7 read with sections 13 (1) (d) and section 13(2) of the Prevention of Corruption Act, 1988, and sentenced to undergo RI for 18 months and fine of Rs.5000/- and in default, to undergo further RI for 3 months.

24. At this stage, Mr.Budhbhatti has prayed for six weeks' time in order to enable the accused to make some arrangement for his family members and funds for going to the Supreme Court. Time to surrender is granted accordingly.

25. Taking into consideration the evidence of two hostile witnesses namely complainant PW-1 Natha Limba and PW-2 (Panch No. 1) Kamlesh Mohanbhai Shah. While parting, we would be simply failing in our duty if we do not issue notices to them for their prima-facie giving false evidence before the court. These days, the prosecution witnesses more particularly Panch Witnesses turning hostile and not supporting the prosecution case has become practically a common feature in most of the criminal cases. In fact, if from experience, one is required to define 'panch' one should not be surprised if someone humoroulsy defines it as a person who is always ready to be hostile not supporting the prosecution. Anyway, may be in some cases some dishonest police officer might be preparing bogus panchnamas which are ultimately not supported at the time of trial before the court. But from this, no general conclusion can be drawn for all times to come that all panchas and panchnamas are universally wrong/bogus. In this view of the matter, whenever court feels that panch and/or for that purpose any other witnesses have turned hostile, not supporting the prosecution case, as a result of being won over, then in that case- if no legal actions are taken against such person, not only it would seriously undermine and damage the Administration of Justice but rather such an insensitive attitude of the Court may further encourage and embolden happy hunting trend and trade of hostile witnesses fouling the fountain of the Administration of Justice !! With a view to prevent this prevalent chronic diseas in criminal trial system, in appropriate cases, trial courts must start issuing notices against the

hostile witnesses for giving false evidence before the court under section 191, 193 of the Indian Penal Code. This vigilence and alertness on the part of trial court will certainly have the deterrent effect upon such witnesses who become hostile at the instance of the accused, openly sabotaging the cause of justice ! All criminal court accordingly must frankly and frequently use this legitimate weapon of issuing notices to the witnesses turning hostile sabotaging cause of justice to keep the fountain of justice unpolluted. In fact we have not come across any cases these days wherein either the trial Court of its own or for that purpose even the learned PP incharge of the case, when prosecution witnesses turn hostile, has requested the Court to issue notices to them for giving false evidence before the Court, not even in the instant appeal before us !! When a witness turn hostile, it is a direct slur on the Investigating Agency indicating that IO has falsely recorded the police statement.

25.1 Accordingly the office is directed to issue notices giving it separate Misc. Criminal Application number against the aforesaid two prosecution witnesses making it returnable on 22-7-1996 for their alleged offences under sections 191 and 193 of IPC for giving false evidence before the court.

26. This takes us to one more important aspect of the need for the expeditous disposal of the cases wherein the public servants are involved and they are on subsistence allowance. This is an aspect of very great public importance and interest and accordingly, once having realized the shocking and deliteious effect upon the public money, to remain mute spectator to this, and that too while discharging duty as a Constitutional functionary, it would be simply abdicating the Constitutional duty, which we can ever think or dream of even. In this regard, during the course of hearing, we had requested the learned APP to call for the particulars as regards : (1) when the accused was suspended ? (2) for what period he continued to remain under suspension ? (3) when taken back in service ? (4) whether at present under suspension ? and (5) what is the total subsistence allowance paid so far to the accused ? In response to this, the learned APP has placed in our hands a letter from DSP Office bearing No. 15213/DSP-M-Godhra dated 28-6-1996, wherein it has been stated that the accused was suspended on 27-7-1990 and from that date onwards upto 17-1-1995 he was under suspension. Thereafter on 18-1-1995 he was taken back on duty and that during the period from 27-7-1990 to 17-1-1995 i.e. during the

suspension period in all he has been paid the subsistence allowance to the tune of Rs. 93,852/- !! Undoubtedly a very huge amount and that too without taking any work ? A situation where millions and millions even educated qualified youth are clamouring for employments have no job, such persons as accused without work gets Rs. 93,852/= and that also because of delayed trial is too shocking an affiar not to be disturbed. A person who was not on duty was required to be paid Rs. 93,852/- from the public exchaquer which is filled up from the honest tax payers money. This court had an occasion to reflect upon the question of subsistence allowance being paid and the ultimate resultant effect on the public exchequer in the decision of this court rendered in case of State Bank of India, Gandhidham versus Prakash Dhirajlal Sheth reported in XXXVII (2) 1996 (2) GLR p-13, wherein in para 8 and 9 it is observed as under :-

> 8. This matter does not and indeed cannot simply rest here with the simple directions as aforesaid. In fact, the further and most important question of quite great public importance touching upon the public administration and public exchequer has arisen in this case which having been once noticed by this Court cannot be hood-wrinked ignoring exercising its power as responsible Constitutional Functionary !! After criminal case is filed against a public servant, in most of the cases, ordinarily, the public servant is suspended and during the said period he earns some suspension allowance as per the rules of the concerned department. Now, if in cases of the public servants, who are serving in the Government or with the public institutions like the Bank. Statutory Corporations, etc., the criminal trials against them for whatever reasons are protreacted and sometimes protracted indiscreetly, irresponsibly and indefinitely like the present case, then in that case, the concerned department will have to continuously pay the suspension allowance to the accused without taking any work from him. The net result of this is that the department suffers on two vital counts viz., firstly, it will suffer that much less work which the concerned servant was doing and secondly, it will also have to pay the subsistence allowance during the suspension period of the concerned servant. This will be a sort of double punishment to the department for no fault of it

rather for the indecisive delayed trial conducted by the unconcerned, irresponsible learned Magistrate ! If the cases of the public servants were to be indefinitely or say for quite longer period to be continued for years together, the sum total of the subsistence allowance in that case was bound to go on increasing substantially taking a very heavy toll of the public coffer without taking any work from him/them !! This is indeed too sad and serious a thing to be lightly countenance by any sensible, responsible citizen worth the name much more so by the learned Magistrate and Judges who are presiding over the proceedings !! No sensible, enlightened citizen more so any authority or the Court can be oblivious to the fact that ultimately the subsistence allowance paid to the suspended employee comes from the public exchequer money collected from the tax contribution of the honest tax-payers' blood, toil and sweat !! In this view of the matter, the amount so collected cannot be allowed to be frittered away because the concerned suspended employee, the concerned learned P.P and the learned Magistrate were somehow not in mood to proceed with the trial under the pretext of some adjournments. I am told by Mr. Desai, learned advocate for the petitioner that as per the rule 50-A (7)(1) of the State Bank of India supervisory Staff Rules, a person who is under suspension is given 50 % (50 per cent), of the basic and 100% (cent percent), of the other allowances. Accordingly, in this case by now the accused has been paid subsistence allowance to the extent of Rs. 1,40,000/= during the course of last twelve years. Now in case, if this accused scores acquittal, what about backwages ? At whose cost ??

9. Now unfortunately this is not the solitary case of suspension. In fact, though difficult to be exact and yet taking the most conservative estimate, the minimum number of public servants under suspension could be roughly around about 1000 such employees. Now tentatively taking this figure of 1000 into consideration, if roughtly estimating an average amount of subsistence allowance at the rate of Rs. 2000/=per month, per suspended employee, the total amount of the said subsistence allowance would come to about Rs. 20,00,000/- per month

and Rs. 2 Crores 40 lacs per annum. This is confined to the employees of the State Government only and to this if the list of the suspended employees of other public organisations such as Banks, Corporations, State Undertakings, Boards, Institutions, etc. is added then the figure may cross even Rs. 5 Crores which will be too excessive a burden ultimately on people !! This is the rough and ready estimate of the Gujarat State only with a view to impress upon the learned Magistrates as to how the sin of indiscreet adjournment can visit and penalize the public coffer, public interest involved !! In light of this, if the National picture is visualised what an astronominal amount it would be which could be diverted to the social welfare schemes !! Out of such huge amount so many constructive things could be atonce done and accordingly to put the interest of the "Rule of Law and Justice" first, where the people get the delayed justice carying and clamouring for expeditious justice, many courts/judges can be accommodated/appointed. If not that atleast one medical college or engineering college or any other technical institution can be opened or many other services or public utility including the employment avenues and opportunity to the needy section of the society can be provided with. There can be more hospitals, educational institutions and such other social welfare organisations without imposing additional taxes to the said extent. Once the aspect of adjournment is viewed from the overall social perspective,l the aforesaid unproductive amount which is just being wasted away by way of subsistence allowance to the suspended employee without doing any work can be quite reduced to a sizeable extent if a policy decision is takne whereby the criminal cases against the Government servants and the servants of the Public Corporations and/or Institutions put under suspension are attended to and disposed of as expeditiously as possible giving top most priority to them eschewing unjust, unreasonable adjournments !! It appears that the required attention is not at all focussed on this voerall vital aspect so far. Not to expedite cases of the public servants getting suspension allowance and ignore it altogether is just like allowing the precious water from public/Municipal tap continuously leaking away in water scarcity areas

> going unused, unproductive in a drainage !! Can this be permitted ?? If not, can the Court be a party to such unproductive collosal waste of public money ? Here it is equally the duty of the departmental head and officer in charge of the departmental inquiry to expedite the departmental proceedings against the deliquent without waiting for the Court proceedings unless some stay order is obtained from the Court or there is some legal sanction in proceeding with the departmental proceedings pending criminal trial !! Accordingly, it is the duty of the department in the first instance to conduct the departmental inquiry and pass appropriate final orders against the deliquent officer and in the second instance for the Court to hear and decide the case at the earliest. The reason is supposing the deliquent officer ultimately succeeds he would be unnecessarily earning back wages for number of months, years even for not working. As against the individual interest of any accused deliquent employee, the overall stake of the society is undoubtedly heavy and larger and accordingly, it is desirable that the said consideration must prevail upon the Court while deciding such cases. In that view of the matter, as far as possible, the Court must see to it as its foremost duty to the public, that the case of the public servants (under suspension) are conducted as expeditiously as possible and no unreasonable adjournments are granted and when granted, reasons thereof should be recorded, imposing cost and even exemplary cost in a given case. "

26.1 The aforesaid paragraphs gives a clear picture of not only of gross wastage of the public money and that too because the cases of such accused persons are not tried in the right earnest but to what extent Government and for that purpose even administration of justice has become insensitive to handle the situation in the right earnest as expeditiously as possible. In this view of the matter, we feel that the concerned courts of the State should be directed to give top-most priority to the criminal as well as civil proceedings wherein public servants are involved and suspended, pending before it with a view to see that the courts are not parties to such collosal wastage of public money. In fact it would be highly desirable if the trial proceedings of such suspended public servants are over preferably within six

months from the filing of chargesheet. This in turn will also help the prosecution witness not committing honest mistake due to memory lapse, giving unnecessary handle to learned advocate to argue !! Not only that but for obtaining sanction to prosecute considerable time is taken by the Investigating Agency. This is also required to be shortened. In fact, after registering the offence, sanction must be obtained within one months or at the most within two months, and thereafter, the chargesheet should be filed within fifteen days. If round about three months if the chargesheet is not filed, Director General, Anti-Corruption Bureau should call for necessary explanation and take appropriate departmental action against the concern Investigating Officer and also must request the concerned departmental head to grant sanction immediately. The concerned sanctioning authority from the date of the receipt of papers shall grant sanction within two months failing which he would be liable for the contempt proceedings of this Court in absence of reasonable explanation. It will also be a duty of the trial Court to see that if it come across any belated granting of sanction and thereafter filing of the chargesheet, appropriate observations are made against the concerned officials by forwarding a copy of his judgment and order at the highest to Secretary level. Incidentally, it may also be stated that some of the learned PPs in charge of Corruption case do not cite judgment of this Court and Apex Court in favour of the prosecution. This is too sad !! Director, Anti-Corruption Bureau is expected to control this pathetic situation. In our view, suspension matters pending before the High court also deserve to be given a top-most priority with a view to see that peoples' money rather our money are usefully saved to be utilized for some better social purposes. In this regard with a view to speedily dispose off corruption cases, powers of special Court requires to be vested in other available competent judges.

26.3 The Registrar is directed to bring this humble views of ours expressed in above paras 25 & 25.1 to the kind notice of the Hon'ble Chief Justice for passing appropriate orders and directions to the sub-ordinate courts and administrative branch of High Court also, if His Lordship deems it fit and proper.

27. The Registrar is also directed to forward a copy of this judgment to the (1) Chief Secretary, Government of Gujarat, (2) Secretary, Legal Department, Gandhinagar, and (3) Director, Anti-Corruption Bureau, Shahibaug, Ahmedabad, inviting their attention in particular to para

25 & 25.1 of this judgment for information and necessary action, with a direction to report back (i) In all how many cases of suspension are pending before the Court (Civil, Criminal, Labour Court, High Court and Supreme Court) and also by way of departmental proceeding before the respective department ? (ii) What total amount of yearly suspension amount paid to such suspended employees ? and (iii) what indeed is the plan to save public money drained out through subsistence allowance on or before 31st October, 1996.

28. Incidentally and certainly, it will indeed not be out of place, more particularly in the overall interst of justice to state, at this stage, that after the above judgment was pronounced in the Open-court, we have before us the reply submitted by PW-1 Nathabhai Lembabhai original complainant and PW-2 Kamlesh Mohanlal {Panch No. 1} who were declared hostile and against whom, while allowing this appeal, we were constrained to issue notice for purjery under Section 191 & 193 of the IP Code {being Misc. Criminal Application No. 3205 of 1996} making it returnable on 27-7-1996. Both these witnesses have appeared through their learned Advocates and filed replyaffidavit in response to the notice issued against them.

28.1 In his reply, PW-1 Nathabhai Lembabhai while expressing repentence and deep regrets has admitted that he has given evidence contrary to his complaint given before PW-5 PI-ACB K.V Baria. It is his case that at no point of time, he had any intention not to support the prosecution and give false evidence before the trial Court, more particularly, the complaint which he has lodged before ACB. It is his further case that as the date of trial was fast approaching, the original accused started mouting pressure harassing him and his family members. Accused in his capacity as Head Constable brought lot of pressure on him and went to the extent of threatening him and his entire family with dire consequences in the event he deposed against him narrating true facts before the learned Special Judge. Further, according to him, the accused went to the extent of administering threats of even killing him, if he deposed against him. Under this mounting pressure, out of fear, feeling, helpless and unsecured, he being poor illiterate Adivasi, was in two minds whether to stick to the facts stated in complaint or not, and ultimately, he yielded to the threats, pressure and gave evidence before the Court against the prosecution for which he has prayed for pardon and mercy and ultimate discharge of notice issued against him.

28.2 Similarly, PW-2 Kamlesh Mohanlal Shah {First Panch} in his reply affidavit in substance tried to clarify and thereby absolve him by saying that the alleged offence took place in the year 1990, while his evidence before the Court came to be recorded in the year 1995. Not only that but according to PW-2, he had no experience of giving evidence before the Court. It was under these circumstances that due to lapse of memory he could not give evidence before the Court in line of the averments made in Panchnama Exh. 13, and was declared hostile by the prosecution. PW-2 has further stated that he had no intention to give false evidence before the Court, and accordingly, notice issued against him be discharged.

29. Now whether to accept and discharge notice against PW-1 & PW-2 or not is the subject matter of separate Misc. Criminal Application, which will be heard and decided in due course after hearing the learned advocates appearing for them. However, at this stage, what is important and interesting to note is an illustration where how even good cases can be just let down by hostile prosecution witnessess which can be saved by taking overall pragmatic and commonsense, substantial justice oriented view of the matter.

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Prakash*